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In re Application of
HOFFMAN, Arnold
Application No. 10/621,326
Filed: July 18, 2003
Attorney Docket No. HOFFMAN9

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: DECISION ON RENEWED PETITION
: UNDER 37 CFR 1.78(a)(3)
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This is a decision on the renewed "Petition To Accept Unintentionally Delayed Claim Of Priority Pursuant To 37 CFR 1.78(a)(3)" filed November 04, 2008. The renewed petition again requests reinstatement of a benefit claim to prior-filed international application PCT/IL02/00051. The benefit claim was included in the application as filed, but it was subsequently deleted from the application by applicants.

The renewed petition is **DISMISSED** without prejudice

The decision mailed herein on September 16, 2008 dismissed without prejudice applicant's original petition for failure to satisfy all the requirements of a grantable petition. Specifically, applicant had not provided an amendment containing an acceptable reference to the international application (the amendment provided with the petition did not include the complete international application number, as required), or an acceptable showing that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional.

With respect to the requirement for a proper reference to the international application, the present renewed petition was not accompanied by a revised amendment or application data sheet containing a reference in compliance with 35 U.S.C. 120 and 37 CFR 1.78(a)(2)(I). Accordingly, this element of a grantable petition remains unsatisfied.

With respect to the showing of unintentional delay, the present renewed petition states that the withdrawal of the benefit claim was an "inadvertent mistake." Under 35 U.S.C. 120, the Office only has the authority to accept a late benefit claim where the delay in submitting the claim was unintentional. In the present case, the applicant deliberately withdrew the benefit claim under 35 U.S.C. 120 directed to the international application. A delay in submitting a benefit claim resulting from a prior deliberate decision to withdraw the benefit claim does not become unintentional merely because applicant, upon reconsideration, later believes the withdrawal to be

a mistake. Clearly, the intentional withdrawal of a benefit claim negates a finding that the entire delay in resubmitting the benefit claim was unintentional. Accordingly, the present record does not support a conclusion that the entire delay between the date the priority claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. This element of a grantable petition therefore also remains unsatisfied.

Based on applicants' failure to satisfy all the requirements of a grantable petition under 37 CFR 1.78(a)(3), the renewed request to add the untimely benefit claim to international application PCT/IL02/00051 is properly dismissed.

Further correspondence with respect to this matter should be addressed as follows:

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Any questions concerning this matter may be directed to Richard M. Ross at (571) 272-3296.



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